LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 7529 **NOTE PREPARED:** Apr 15, 2009
BILL NUMBER: HB 1612 **BILL AMENDED:** Mar 24, 2009

SUBJECT: Various Financial Institution Matters.

FIRST AUTHOR: Rep. Bardon **BILL STATUS:** As Passed Senate
FIRST SPONSOR: Sen. Paul

FUNDS AFFECTED: X GENERAL **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: (Amended) This bill makes various changes to the laws concerning: (1) financial institutions; (2) debt management companies; (3) pawnbrokers; (4) money transmitters; (5) check cashers; (6) persons licensed under the Uniform Consumer Credit Code; (7) first lien mortgage lenders; and (8) rental purchase agreements. The bill repeals provisions being superseded by this bill and repeals a provision requiring the display of a license by a debt management company.

Effective Date: Upon Passage; July 1, 2009.

Explanation of State Expenditures: *Summary*- The Department of Financial Institutions (DFI) would take on additional enforcement responsibilities under these provisions. Although, the DFI could see an increase in expenditures, the bill would permit additional fees and civil penalties that could offset enforcement costs. The impact would ultimately depend on the number of additional enforcement actions taken by the DFI and the fee levels set annually by the DFI.

There could be some costs savings to the DFI regarding DFI board membership meetings, the venue of administrative and judicial reviews, and exemptions from regulation for certain liquidations. Violation of several of the new regulations would be subject to a Class A misdemeanor, which would affect state and local expenditures and revenues. Annual license renewals would be required of certain sectors including debt management and specialized financial institutions.

Additional Enforcement Responsibilities:

(Revised) *First Lien Mortgage Lenders*- With respect to first lien mortgage lenders, the bill allows the

Director of the DFI (DODFI) to remove a prohibited director, officer or employee, or impose a civil penalty of $500 on a creditor per day for willfully permitting a prohibited person to serve a creditor. It provides for hearings and allows the DODFI to suspend or prohibit participation of a director, officer or employee upon notice. It requires the DFI to maintain official records of these proceedings. The bill specifies that a final order by the DODFI may remove the director, officer or employee, prohibit participation, or both. In addition, the DODFI may impose a civil penalty of up to $15,000 per each practice, violation, or act. Assessed civil penalties would be deposited in the Department of Financial Institutions Fund. This enforcement power is extended to the director, officer, or employee of an affiliate in certain circumstance. The DFI may apply for relief to a court having jurisdiction, which could increase enforcement costs for the DFI.

Credit Unions: The bill makes changes to the types of investments a credit union may make, and it requires a credit union to divest stock or other equity investments received through loan default within a year. A credit union may rent excess space at a main office or branch as a source of income. The bill requires credit unions to maintain membership cards in the main office and the minimum information they must contain. It defines an illegal member and requires termination unless there is a loan outstanding, and it allows for trust members if the settler or at least one beneficiary is a member. A credit union must inform the DFI within 30 days of replacement of the chief executive officer. The bill specifies criteria for directors, supervisory committee members, and credit committee members, and makes the credit union board responsible for eight specific duties. Credit unions with assets of at least $5 M (instead of $10 M) will have annual audits performed by an outside accounting firm. The bill allows credit unions to issue shares to and receive deposits from minors, and to receive state and federal funds. It changes the reserve requirements for credit unions and allows for the credit union board to terminate services to members in certain circumstances.

Other Regulations: The bill adds various requirements or prohibitions that could result in more examinations, enforcements, or administrative or judicial proceedings, which could increase costs for the DFI. The added regulations include:

- Every lessor must keep records of all payments remitted by the lessor on a rental agreement.

- The DFI may revoke licenses or officers or other employees may be disqualified for any felony conviction (rather than felonies involving fraud, deceit, or misrepresentation). This applies to licenses for budget service companies, pawnbrokers, money transmitters, and check cashers.

- A person licensed as a budget service company must notify the DFI within 30 days that a civil action has been filed.

<u>*Cost Savings -*</u>

(Revised) *Meeting of Members:* The bill may reduce traveling expenses for meetings of the members. Under the bill, four members would have to be physically present at a meeting of the board. Other members would be allowed to participate using a means of communication that permits all of the members to simultaneously communicate with one another. A member who is not physically present may not cast a deciding vote on an official action.

Venue: The bill potentially reduces costs for the DFI by specifying that the location for administrative or judicial review is in Marion County. This provision is applied to the Uniform Consumer Credit Code, budget service companies, pawnbrokers, money transmitters, and check cashers.

Cost Savings: The bill could reduce costs for the DFI by providing an exception to regulation of the liquidation of financial institutions when the Federal Deposit Insurance Corporation is appointed the receiver. Potentially the bill could reduce costs for the voluntary dissolution of banks, trust companies, and building and loan associations by subjecting undistributed shares to the unclaimed properties law. The bill exempts depository financial institutions and third-party bill paying services from provisions concerning budget service companies.

Background Information: DFI Board- The Financial Institutions Fund (FIF) receives all revenue for and pays the annual expenses of the DFI. The DFI Board has seven members who establish policy and procedure for the DFI and the DODFI administering the DFI. Members who are not state officers receive an annual salary of $4,000 a year plus travel and other expenses.

Financial Institutions Fund- During FY 2008, the FIF received $8.0 M and paid expenditures of $7.9 M.

Explanation of State Revenues: *Budget Service Companies:* Budget service companies (BSC) would have various new responsibilities including maintaining specific disclaimers, notifications, and agreements as given to customers and preparation of an annually renewable financial analysis. BSC's would also have to adhere to new permissible fees and certain prohibited acts. Violation of these new provisions would be punishable as a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is $5,000.

BSC Compliance Remedies- The DFI could order a BSC or its director to cease and desist from any violations, to order restitution, impose a civil penalty of not more than $10,000 for each violation, or court action. The DFI may impose a civil penalty of up to $20,000 if a person that is in violation of a final order. The DFI would be allowed to recover reasonable costs of enforcement.

Rental Purchase Agreements and Late Fees: A lessor would be prohibited from holding payments in a reserve account for future payments. Violations of this provision could result in additional civil actions or further penalties not exceeding $1,000. The civil penalty amount for violations concerning rental purchase agreements would be raised from $1,000 to $10,000 per violation. The bill removes a $5 per day fee for each day a lessor is late paying a notification fee. Instead The DFI would be able to determine late fees on notification fees. (Currently, the late fee is $5 per day).

Financial Institution Excess Fees: The bill allows the DFI to impose a fee for each that excess costs for examinations of financial institutions are not paid beginning 30 days after receipt of an invoice for the costs.

Pawnbrokers, Money Transmitters, and Check Cashers: The bill requires annual renewal of a pawnbroker license and a check casher license. It allows the DFI to impose a late fee as determined by the DFI (rather than $5) for any renewal not received by June 1 for a pawnbroker. The bill makes an initial license for a money transmitter effective through March 31 rather than December 31.

Explanation of Local Expenditures: *Penalty Provisions:* A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: DFI.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

Fiscal Analyst: Chris Baker, 317-232-9851.